

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>STEVEN J. &amp; CHERYL A. GIOIA,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DOUGLAS COUNTY BOARD OF EQUALIZATION.</b></p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Steven J. Gioia Address: 1843 County Road 132 Elizabeth, Colorado 80107</p>	<p><b>Docket Number: 42114</b></p>
<p style="text-align: center;"><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on July 1, 2004, Diane M. DeVries and Steffen A. Brown presiding. Petitioner appeared pro se. Respondent was represented by Kelley Dunnaway, Esq.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**8089 Brandon Drive, Littleton, Colorado  
(Douglas County Schedule No. R0329649)**

Petitioner is protesting the 2003 actual value of the subject property, a .651-acre site with a 14,000 square foot industrial building constructed in 1987 of steel supports and metal siding.

## **ISSUES:**

### **Petitioner:**

Petitioner contends that the subject has been overvalued. The subject property's assigned value exceeds the typical values assigned to similar properties in the area and does not represent a uniform, just and equalized value.

### **Respondent:**

Respondent contends that the subject has been properly valued using the appropriate approaches to value and that the subject sold within the base year for \$825,000.00.

## **FINDINGS OF FACT:**

1. Petitioner's witness, Mr. Patrick Sullivan, a General Certified Appraiser, presented an indicated value of \$630,000.00 for the subject property.

2. Mr. Sullivan did not present any comparable sales, but did present the assessor's actual values of 11 properties. The total actual values of the 11 properties ranged from \$325,000.00 to \$1,500,000.00 and in size from 6,000 to 24,000 square feet or \$38.61 to \$62.50 per square foot. After adjustments were made, the actual values ranged in price from \$34.13 to \$52.80 per square foot.

3. Mr. Sullivan testified that the subject has limited parking, a land-to-building ratio of 2:1 and functional inadequacy due to the lack of side access. Access is through the front of the building only.

4. Mr. Sullivan testified that uniformity in assessment is a major problem. The property at 12445 Dumont Way, a larger building with 18,750 square feet and a land-to-building ratio of 5.9:1, is valued lower than the subject. Page 14 of Petitioner's Exhibit B shows the actual values of the industrial buildings in Park 85 Subdivision in relation to the subject.

5. Mr. Sullivan testified that Petitioner, Mr. Gioia, received favorable owner financing and that the loan-to-value ratio was 90% versus the typical market loan-to-value of 70%. The amortization period was also favorable at 30 years versus a typical market amortization of 20 to 25 years.

6. In cross-examination, Mr. Sullivan testified that he does not know if the functional problem was an issue when Petitioner purchased the property. His understanding is that it is not a new issue. Mr. Sullivan testified that the amount of adjustment from the sales price due to seller financing risk should be \$195,000.00. Mr. Sullivan thinks that the \$629,890.00 value indicated by Respondent's Cost Approach is applicable and supports Petitioner's requested value of \$635,000.00.

7. Petitioner, Mr. Steven J. Gioia, testified that the interest rate is 8.5%, not 9.5% as

shown in Petitioner's Exhibit A, page 15.

8. In cross-examination, Mr. Gioia testified that there was no appraisal on the property and that the price was attractive due to the owner financing. Mr. Gioia does not remember talking to the County regarding whether or not the sale was arms-length or if the price would be different if no owner financing was involved.

9. Petitioner is requesting a 2003 actual value of \$635,000.00 for the subject property.

10. Respondent's witness, Mr. Mike Shafer, a Certified Residential Appraiser with the Douglas County Assessor's Office, presented the following indicators of value:

Market:	\$825,000.00
Cost:	\$629,890.00
Income:	\$822,200.00

11. Based on the market approach, Respondent's witness presented an indicated value of \$825,000.00 for the subject property for tax year 2003.

12. Respondent's witness presented six comparable sales ranging in sales price from \$500,000.00 to \$2,500,000.00 and in size from 5,115 to 49,000 square feet. No adjustments were made to the comparable sales.

13. Mr. Shafer testified that Comparable 1 sold outside the base period, but was used due to its close proximity to the subject. Mr. Shafer testified that he verified the sale of the subject property in September 2002 and was told that the transaction was arms-length. Owner financing did make the sale easier, but Mr. Gioia had his own financing in place. The terms and interest rate were market and no changes have been made to the property since it was purchased.

14. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$629,890.00.

15. Mr. Shafer testified that he did not feel the cost approach was appropriate due to the age of the property and depreciation applied. Therefore, it made a less reliable indicator of value.

16. Based on the income approach, Respondent's witness presented an indicated value of \$822,000.00 for the subject property.

17. Mr. Shafer referred to Respondent's Exhibit A, page 23, testifying that the figures shown in the income approach were based on typical income and expenses. He used \$8.00 per square foot triple net, a 5% vacancy rate, 15% for triple net expenses and a capitalization rate of 11%.

18. Mr. Shafer testified that he placed the most weight on the market and income approaches to value.

19. In cross-examination, Mr. Shafer testified that he did not know if Comparable Sale 1 would demand a higher value since it has more office space. Mr. Shafer admitted that one could possibly make an adjustment for quality of construction. In addition, he indicated that Comparables 4 and 5 could possibly be adjusted for visibility and location, which would reduce their value.

20. Respondent assigned an actual value of \$825,000.00 to the subject property for tax year 2003.

## **CONCLUSIONS:**

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly valued for the tax year 2003.

2. The Board appreciates Petitioner's concern regarding the equity of the assessor's actual values; however, the Board could give little weight to Petitioner's comparables, as they were not actual sales. Pursuant to Colorado Revised Statutes, the value of commercial property must be determined based on the market, cost and/or income approaches to value.

3. While the Board may agree, in part, that some types of owner financing could be a marketing tool or affect sales prices, it was not persuaded by the evidence and testimony presented that it was applicable in this transaction. Although the down payment may have been favorable, the Board believes the interest rate and terms, which included a 10-year balloon, were typical in the market.

4. The Board finds Respondent's comparable sales to be appropriate. However, the lack of adjustments is inconsistent with accepted appraisal practice, particularly if there are differences that might be recognized by the market.

5. The Board placed little weight on Respondent's income approach as most of the data is based on what is typical for "Front Range Commercial Properties," rather than on the specific income and expenses of the subject property or similar properties.

6. As to the cost approach, the Board agrees with Respondent that it should be given little weight due to the age and condition of the subject, which makes depreciation difficult to measure. The cost approach is typically beneficial when the improvements are new.

7. Petitioner did not present any evidence in support of the requested value. Properties presented by Petitioner were based on actual values assigned by the Assessor. Respondent provided sales but made no adjustments. The Board reviewed Respondent's comparable sales and notes that with the exception of Comparable Sale 6, all of the sales have a higher value per square foot than the \$59.00 per square foot the Respondent applied to the subject property.

8. After careful consideration of all of the testimony and evidence presented, the Board affirms Respondent's assigned value of the subject property for tax year 2003.

**ORDER:**

The petition is denied.

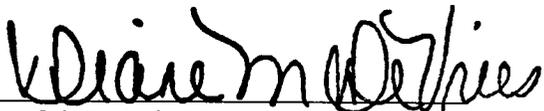
**APPEAL:**

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

**DATED and MAILED** this 30<sup>th</sup> day of July 2004.

**BOARD OF ASSESSMENT APPEALS**

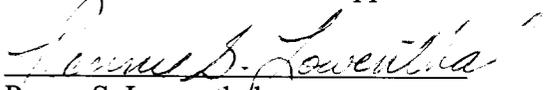
  
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Diane M. DeVries

  
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Steffen A. Brown

This decision was put on the record

**JUL 30 2004**

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

  
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Penny S. Lowenthal

